

REMARKS

Claims 9-12, 14 and 17 were previously pending in the application. By the Amendment, Claims 9 and 12 are currently amended, new Claims 19-21 have been added, and Claims 10, 11, 14 and 17 remain unchanged.

The Examiner rejected Claim 12 under 35 USC §112 as being indefinite. Claim 12 has been amended to provide appropriate correction.

Claims 9-12, 14 and 17 were rejected under 35 USC §103(a) as being unpatentable over German publication G 90 14 463.5 (hereinafter "DE '463") in view of Carter (US 3,990,617).

Independent Claim 9 recites a storage compartment for a refrigerator door, the storage compartment comprising: a box shaped body having a first longitudinal wall and a second longitudinal wall and a given depth extending substantially horizontally between the first and second longitudinal walls with a slot extending vertically within the first longitudinal wall at least along a portion thereof; and a compartment divider having a rider extending downwardly spaced from a wall thereof located adjacent to said slot for being received within the slot for holding said compartment divider attached within said box shaped body, and said compartment divider defining a chamber for holding small items and extending over more than half of the given depth, wherein the compartment divider is defined by four connected walls which do not extend to a bottom of said box shaped body to define said chamber within the connected walls for holding items therein, and an open bottom for allowing items held therein to rest on said bottom of said box shaped body.

DE '463 does not disclose, among other things, the compartment divider "extending over more than half of the given depth," as recited in Claim 9. In the Office action dated September 20, 2006, the Examiner viewed the "given depth" as being the top to bottom dimension of the box shaped body. Claim 9 has been amended to clarify the "given depth" dimension. With the clarified definition of the "given depth" in Claim 9, neither DE '463 nor Carter disclose this feature of the compartment divider "extending over more than half of the given depth."

As acknowledged by the Examiner, DE '463 does not disclose the chamber of the divider as having an open bottom. The Examiner contends that it would have been

obvious to modify the divider of DE '463 to utilize an open bottom as taught by Carter. Applicants respectfully disagree and request reconsideration. Applicants note that DE '463 is assigned to the same entity as the present application. The compartment divider of DE '463 is intended to provide a smaller compartment that supports smaller items above the bottom of the refrigerator door storage compartment. Eliminating the bottom of DE '463 would eliminate the intended purpose of the divider. Therefore, there is no teaching, suggestion, or motivation to remove the bottom of the divider of DE '463 regardless of the other reference.

Carter discloses a belt radio clip (10) for carrying a two-way type radio (22) conventionally used by police officers or firemen. The belt radio clip (10) includes a radio embracing member (12) having a plurality of walls (14, 16, 18) forming a rectangular opening to receive the radio and frictionally engage the outer case of the radio.

Applicants respectfully submit that Carter is non-analogous prior art. To be analogous, the reference must either be in the field of Applicants' endeavor or be reasonably pertinent to the particular problem with which the inventor was concerned. Carter is not in the Applicants' field of endeavor. The belt radio clip of Carter is not related to a storage compartment for a refrigerator door and is not in the Applicants' field of endeavor.

Also, Carter is not reasonably pertinent to the particular problem with which the Applicants were concerned. The problem with which the Applicants were concerned was providing a refrigerator door storage compartment that helped prevent relatively tall unstable items (such as bottles or tubes) that are resting in the storage compartment from falling over when the refrigerator door is opened or closed. Carter is not reasonably pertinent to this particular problem.

A reference may be reasonably pertinent if it is one which logically would have commended itself to an inventor's attention in considering his problem. A person of ordinary skill in the art of refrigerator doors would not reasonably be expected or motivated to look to the art of belt radio belt clips to solve the problems of a storage compartment for a refrigerator door. The applicants would have had less motivation or occasion to consider Carter because the reference is directed to a different purpose.

Accordingly, Applicants respectfully submit that Carter is non-analogous prior art and is not an appropriate basis for a rejection under 35 USC §103.

Even if Carter was an analogous prior art reference, which it is not, there is no teaching, suggestion or motivation within the prior art to combine DE '463 and Carter. Furthermore, Carter teaches away from the claimed invention for at least two primary reasons. First, Carter teaches that the radio (22) is supported by the embracing member (12). Carter discloses the radio being frictionally engaged within the rectangular opening of the embracing member (12) to support the radio. (See col. 1, lines 49-51; col. 2, lines 66-68; and col. 3, lines 16-22) Also, as shown in Figs. 1 and 2, Carter discloses the radio (22) having a lip (56) that abuts the top surface of the front wall (14) to further support the radio (22). (See col. 3, lines 11-14) Applying these teachings of Carter to DE '463 would result in the item being frictionally engaged within the compartment (22 or 30) and supported above the bottom (29) of the storage compartment (21). This is the opposite of the claimed invention in which the compartment divider has "an open bottom for allowing items held therein to rest on said bottom of said box shaped body."

Second, Carter teaches the clip-like belt engaging member (26) having a U-shaped hook-like portion (36) that engages the lower surface of the belt and prevents the clip from being removed from the belt in an upwardly direction. Applying these teachings of Carter to DE '463 would require an additional groove formed in the back wall (24) of the storage compartment to receive the U-shaped hook-like portion (36). This would also prevent the divider (22, 30) from being removed from the slot (25) in a vertical dimension. The dividers of DE '463 are intended to be easily removable and adjustable to provide modular storage options within the storage compartment of the refrigerator door. The U-shaped hook-like portion (36), as taught by Carter, would prevent this intended purpose of DE '463. Therefore, Carter teaches away from the claimed invention and there is no teaching, suggestion or motivation to make the proposed modification.

For these and other reasons, DE '463 and Carter, either alone or in combination, do not teach or suggest the subject matter defined by independent Claim 9. Therefore, Claim 9 is allowable. Claims 10-12, 14 and 17 depend from Claim 9 and are allowable for the same reasons and also because they recite additional patentable subject matter.

New independent Claim 19 recites a storage compartment for a refrigerator door, the storage compartment comprising: a box shaped body having a first longitudinal wall disposed adjacent to the refrigerator door, a second longitudinal wall spaced apart from the first longitudinal wall and extending substantially parallel to the first longitudinal wall, a bottom, and a slot formed in the first longitudinal wall, the box shaped body having a width dimension extending along the first longitudinal wall in a substantially horizontal direction, a depth dimension extending between the first and second longitudinal walls, and a height dimension extending along the first longitudinal wall in a substantially vertical direction; a compartment divider including a first sidewall disposed adjacent the first longitudinal wall, a second sidewall spaced apart from the first sidewall a first distance being more than half of the depth dimension of the box shaped body, and third and fourth sidewalls extending between the first and second sidewalls on opposing sides of the compartment divider, the compartment divider defining a chamber within the sidewalls and having an open bottom allowing items held within the compartment divider to rest on the bottom of the box shaped body; and a rider connected to the first sidewall and extending downwardly and being received within the slot to support the compartment divider within the box shaped body.

The prior art, particularly DE '463 and Carter, does not disclose a storage compartment for a refrigerator door as recited in Claim 19. More specifically, the prior art does not disclose, among other things, a compartment divider including a first sidewall disposed adjacent the first longitudinal wall, a second sidewall spaced apart from the first sidewall a first distance being more than half of the depth dimension of the box shaped body, and third and fourth sidewalls extending between the first and second sidewalls on opposing sides of the compartment divider, the compartment divider defining a chamber within the sidewalls and having an open bottom allowing items held within the compartment divider to rest on the bottom of the box shaped body.

Therefore, Applicants respectfully request allowance of independent Claim 19. Claims 20-21 depend from Claim 19 and should be allowed for the same reasons and also because they recite additional patentable subject matter.

CONCLUSION

In view of the above, entry of the present Amendment and allowance of Claims 9-12, 14, 17 and 19-21 are respectfully requested. If the Examiner has any questions regarding this amendment, the Examiner is requested to contact the undersigned. If an extension of time for this paper is required, petition for extension is herewith made.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Craig J. Loest", with a stylized flourish at the end.

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